

### REMARKS

Applicant has reviewed the Office Action mailed on January 21, 2004, as well as the art cited. Claims 2-12 are currently pending in this application.

### DRAWINGS

In the office action dated January 21, 2004, the Examiner indicates in paragraph 1 that the proposed drawing correction and/or the proposed substitute sheets of drawings filed on June 27, 2002 have been approved. The next 2 lines of the paragraph contradict this statement by stating "A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance." It is unclear as to the status of the drawings in this application and the Applicant respectfully requests clarification.

### Rejections Under 35 U.S.C. § 102

Claims 2-12 were rejected under 35 USC § 102(e) as being anticipated by Thompson et al., (U.S. Patent No. 5,594,726). Applicant respectfully traverses this rejection

### Claim 2

Claim 2 is directed to a head end. The head end includes at least one modem for communicating with service units over a transmission bandwidth, the transmission bandwidth being divided into a number of subbands, each subband including a plurality of payload channels and at least one control channel and a control circuit, communicatively coupled with the at least one modem, that assigns each service unit to a subband such that the service units are substantially evenly distributed over the subbands.

### Claim 3

Claim 3 is directed to a head end. The head end includes at least one modem for communicating with service units over a transmission bandwidth, the transmission bandwidth being divided into a number of subbands, each subband including a plurality of payload channels and at least one control channel and a control circuit, communicatively coupled with the at least

one modem, that assigns each service unit to a subband such that the load of the service units is substantially evenly distributed over the subbands.

#### Claim 8

Claim 8 is directed to a head end. The head end includes at least one modem for communicating with service units over a transmission bandwidth, the transmission bandwidth being divided into a number of subbands, each subband including a plurality of payload channels and at least one control channel and a control circuit, communicatively coupled with the at least one modem, that assigns each service unit to a subband such that the service units are substantially evenly distributed over the subbands. Each subband includes a number of payload channels that transmit data at a first rate and a control channel that transmits data at a second rate, the second rate being slower than the first rate.

The office action asserts that “Thompson et al. discloses a head end comprising at least one modem for communication with service units over a transmission bandwidth. The transmission bandwidth divided it to a number of subbands. Each of subbands including a plurality of control channels and at least on control channel. A control unit, communicably coupled with at least one modem, that assigns each service unit to a subband such that the service units are “substantially” evenly distributed over the subbands.”

Applicant has reviewed the cited art in view of the Examiner’s assertions and does not find that Thompson et al. clearly anticipates claims 2-12. In particular, Thompson et al. does not teach or suggest “each subband including a plurality of payload channels and at least one control channel” as found in claims 2, 3 and 8. Further, Thompson et al. does not teach or suggest a control circuit that assigns each service unit to a subband such that the service units are substantially evenly distributed over the subbands as found in claim 2 or a control circuit that assigns each service unit to a subband such that the load of the service units is substantially evenly distributed over the subbands as found in claim 3. Further, Thompson et al. does not teach or suggest a control circuit that assigns each service unit to a subband such that the service units are substantially evenly distributed over the subbands as found in claim 8. The Examiner relies on Figure 3C for the assertion that Thompson et al. discloses each of subbands including a *plurality of control channels* and at least on control channel and Figures 3A-3C and Figure 3 (the Examiner does not indicate which figure) for the assertion of a control unit that assigns each

service unit to a subband such that the service units are “substantially” evenly distributed over the subbands. Applicant does not find that the noted figures alone or in combination with the description of Thompson et al. teach or suggest these limitations of claims 2, 3, or 8 as noted above. The Applicant finds is no discussion in Thompson et al. of subbands including at least one control channel. Further, Thompson et al. does not teach or suggest each subband includes a number of payload channels that transmit data at a first rate and a control channel that transmits data at a second rate, the second rate being slower than the first rate as found in claim 8. In particular, the Examiner does not address this limitation of claim 8. As a result, Applicant finds that claims 2, 3 and 8 are not anticipated by Thompson et al. and should be allowed.

Claims 4-7 depend from and further define allowable claim 3 and for at least the reasons provided above, should also be allowed. Since the Applicant believes, Claims 4-7 are allowable for the above reasons, Applicant may not have put forth responses to additional rejections to said claims at this time. However, the Applicant reserves the right to address said additional rejections to said claims if a further response is required.

Claims 9-12 depend from and further define allowable claim 8 and for at least the reasons provided above, should also be allowed. Since the Applicant believes, Claims 9-12 are allowable for the above reasons, Applicant may not have put forth responses to additional rejections to said claims at this time. However, the Applicant reserves the right to address said additional rejections to said claims if a further response is required.

*Reservation of Right*

Applicant expressly reserves the right to swear behind any reference cited by the Examiner under 35 U.S.C. §102(e)/103, 102(a)/103, 102(a), or 102(e). Any statements regarding these references are not an admission that the references are prior art.

Serial No.: 09/901,374

Filing Date: July 9, 2001

Attorney Docket No. 100.070US26

Title: DYNAMIC ALLOCATION OF TRANSMISSION BANDWIDTH IN A COMMUNICATION SYSTEM

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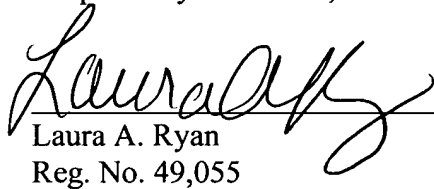
**CONCLUSION**

Applicant respectfully submits that claims 2-12 are in condition for allowance and notification to that effect is earnestly requested. If necessary, please charge any additional fees or credit overpayments to Deposit Account No. 502432.

If the Examiner has any questions or concerns regarding this application, please contact the undersigned at (612) 332-4720.

Respectfully submitted,

Date: 21 July 2004

  
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Laura A. Ryan  
Reg. No. 49,055

Attorneys for Applicant  
Fogg and Associates, LLC  
P.O. Box 581339  
Minneapolis, MN 55458-1339  
T – (612) 332-4720  
F – (612) 332-4731